151 U 8229

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. ~~1350.~~ ~~946~~ ~~506~~ 144 28

WILLIAM P. HALLIDAY, APPELLANT,

vs.

RICHARD H. STUART AND JOHN S. WHITAKER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED OCTOBER 14, 1889.

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vs.

RICHARD H. STUART AND JOHN S. WHITAKER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 27, 1889.

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1 Be it remembered that on the 13th day of April, A. D. 1885, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas Richard H. Stuart and John S. Whitaker, by Mark Valentine, Esq., their solicitor, and filed therein their transcript from the Chicot county circuit court, Arkansas, in case of William P. Halliday against Richard H. Stuart and John S. Whitaker; which transcript is in the words and figures following, to wit:

Be it remembered that in the chancery court of Chicot county, Arkansas, and on the 2nd day of April, 1885, in vacation, the following proceedings were had, to wit:

In Vacation, April 2nd 1885.

WILLIAM P. HALLIDAY
vs.
RICHARD H. STUART and JOHN S. WHITAKER.

2 This day came Richard H. Stuart and John S. Whitaker, the petitioners herein, by their solicitors, Mark Valentine, Esq., and filed their petition and bond for the removal of this cause to the United States circuit court for the eastern district of Arkansas, at Little Rock. Said petition being in due form, the prayer thereof is granted; and the bond, with Mark Valentine and R. M. Gaines as sureties thereon, being in due form and good and sufficient, the same is hereby approved.

Attest: GEO. T. WILKINSON, *Clerk*,
By C. L. MEAD, *D. C.*

Petition for Removal.

In the Circuit Court of Chicot County. In Vacation, April, 1885.

WILLIAM P. HALLIDAY
vs.
RICHARD H. STUART and JOHN S. WHITAKER.

Petition of defendants for removal.

3 Your petitioners respectfully show to this honorable court that the amount in dispute in the above-entitled suit exceeds, exclusive of costs, five hundred dollars; that the controversy in said suit is between citizens of different States; that the petitioner, Richard H. Stuart, at the time of the commencement of this suit, was and still is a citizen of the State of Virginia, and that the defendant, John S. Whitaker, then was and still is a citizen of the State of Louisiana, and that the plaintiff, William P. Halliday, then was and still is a citizen of the State of Illinois.

And your petitioners offer herewith a bond, with good and sufficient surety, for their entering in the circuit court of the United States for the eastern district of Arkansas, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said United States court, if said court

should hold that this suit was wrongfully or improperly re-
4 moved thereto.

They therefore pray this court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said United States court for the eastern district of Arkansas.

MARK VALENTINE,
Attorney for Petitioner.

Endorsed: Petition of defendants. Filed in my office April 2nd, 1885. Geo. T. Wilkinson, cl'k, by C. L. Mead, D. C.

Bond for Removal.

Know all men by these presents that we, Richard H. Stuart and John S. Whitaker, as principals, and Mark Valentine and R. M. Gaines, as sureties, are firmly bound unto William P. Halliday in the penal sum of five hundred dollars, yet upon these conditions:

The said Stuart and Whitaker having petitioned the circuit
5 court of Chicot county, Arkansas, for the removal of a certain cause therein pending, wherein William P. Halliday is plaintiff and Richard H. Stuart and John S. Whitaker are defendants, to the circuit court of the United States for the eastern district of Arkansas:

Now, if the said Stuart and Whitaker, your petitioners, shall enter into said circuit court of the United States on the first day of its next session a copy of the record in said suit and shall pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain in full force and virtue.

Witness our hands this — day of April, 1885.

RICHARD H. STUART & JNO. S. WHITAKER,
By MARK VALENTINE, *Att'y.* [L. S.]
MARK VALENTINE. [L. S.]
R. M. GAINES. [L. S.]

6 Endorsed: Filed April 2nd, 1885. Geo. T. Wilson, clerk by C. L. Mead, D. C.

In the Chicot Circuit Court. July Term, 1885.

WILLIAM P. HALLIDAY
v.
RICHARD H. STUART and JOHN S. WHITAKER. } Complaint in Equity.

The plaintiff, William P. Halliday, states that at the January term, 1878, of the Chicot circuit court in chancery in cause # 68 on said chancery docket a decree was entered foreclosing a lien upon the following lands situate in Chicot county, to wit: S. E. ¼ sec. 30, E. ½ of S. W. ¼ sec. 30, S. E. ¼ of N. W. ¼ of sec. 30, all sec. 31, all in

township 14 south, range 1 west, and S. ½ sec. 36, N. E. ¼ of N. W. ¼ sec. 36, N. E. ¼ sec. 36, and S. W. ¼ sec. 35, in T. 14 S., R. 2 W.; N. ½ sec. 1, N. E. ¼ of S. E. ¼ sec. 1, N. E. ¼ sec. 2, N. ½ of S. ½ sec. 2, N. ½ of S. ½ sec. 3 and N. W. ¼ sec. 3, all in township 15 S., R.
7 2 W., the whole containing 2,634.16 acres, and, say, 2,580.16 outside of Willow Lake, and decreeing sale thereof to pay amount of decree; and at January term, 1879, R. M. Gaines, Esq., was appointed a com'r to make sale of said lands, as will more fully appear by reference to copies of said decrees herewith filed, marked Exhibit "A" and Exhibit "B," made part hereof.

And that on February 27, 1879, while an appeal from said decree of foreclosure was pending in the supreme court of Arkansas, the plaintiff in the suit and the defendants, who were appellants in said appeal, entered into a written agreement, by which the proceeds of the sale so ordered and to be made should be paid into the said circuit court, and there held to abide the decision of the case on appeal and to be in place of the property. By mistake of the party who drew the agreement the names of some parties in the style of the case are wrong. A copy of said agreement is herewith
8 filed, marked Exhibit C, and made part hereof.

And that on May 1st, 1879, said lands were offered for sale by said com'r at public auction, and this plaintiff became the purchaser thereof for the sum of $1,200.00, and that he paid said sum of $1,200.00, and that said sale was duly reported and was confirmed and a deed executed by said com'r and approved by said court and delivered to this plaintiff. Copies of said report, said deed, and said decrees are herewith filed, marked Exhibits D, D^1, and D^2, D^3, representing and made part hereof.

And that under said purchase plaintiff entered into possession of said property as the owner thereof, and has remained in possession, actual or constructive, up to the present time, claiming and exercising acts of ownership and control, as he had and still has the right to do, as he is advised.

And plaintiff further states that he has been informed and
9 believes that the defendants claim said lands by virtue of a purchase thereof made at sale under a decree entered in said circuit court in said case # 68 at the January term, 1882, of said court; that plaintiff was not a party to said suit # 68 and was not present therein, by attorney or in person, before his said purchase nor after the confirmation of his said purchase at the July term, 1879, as aforesaid, nor has he been made a party or summoned to appear in said suit, as far as he has been informed, and that any proceedings in said suit in which he was not a party could not, as he is advised, have any force or validity in determining, adjudging, or depriving him of any rights acquired by his said purchase and the confirmation thereof.

And further states that the proceeds of said sale and purchase by him were paid into court and have never been tendered or
10 returned by said court, but are held by the officer of the court to be disposed of under said agreement and decrees of

the court after the disposal of the case, pending an appeal at time said agreement was made.

And that the steps taken subsequent to the confirmation of the sale at which plaintiffs purchased in May, 1879, are as to him absolutely void and of no virtue.

And that said defendants threaten to take steps to secure the possession of said property and to actually occupy the same, and so deny the validity of plaintiff's title and right to occupancy thereto, to the wrong and injury of plaintiff.

Wherefore plaintiff prays for an order of injunction, directed to said defendants, injoining and restraining them and each of them and their agents and attorneys from attempting to take possession of said property and from seeking or obtaining any writ of possession for same until the further order of this court, and that
11 upon final hearing of this case that such injunction may be made perpetual, and for all other proper relief.

D. H. REYNOLDS,
Attorney for Plaintiff.

STATE OF ARKANSAS, *County of Chicot:*

Daniel H. Reynolds says that he is the attorney of William P. Halliday, who is now absent from Chicot county, and that affiant believes that the statements in the foregoing complaint are true.

D. H. REYNOLDS.

Sworn to before me on this 23rd day of January, 1885.

GEO. T. WILKINSON, *Clerk.*

EXHIBIT A TO BILL.

At the January term, on February 2nd, 1878, of the Chicot circuit court, in chancery, the following, among other, proceedings were had, to wit:

EMMA J. WRIGHT, Ex't'x,
v.
SAMUEL R. WALKER *et al.* } 68.

On this day this cause coming on to be heard on the answer and cross-bill of John S. Whitaker, as executor of the estate of Horace F. Walworth, deceased, filed by leave of the Supreme Court in this cause, and the motion to strike out a part of said answer and cross-bill and demurrer to the remainder thereof; and on the petition of Richard H. Stuart and the motion to strike out the same, and on the original pleadings in the cause, upon the argument of counsel, and the court, being sufficiently advised, doth sustain said motion and demurrer to said Whitaker's answer and cross-bill, and doth sustain said motion to strike out the said petition of said Stuart; and it appearing to the court that there is due to plaintiffs on the notes and purchase-money of excess of lands, as shown by the
13 agreement and surveyor's report herein, the sum of fifty-three thousand and sixty-five & $\frac{60}{100}$ dollars, and that the same is a

lien on the following-described lands, situate in Chicot county, Arkansas, to wit: S. E. ¼ sec. 30, E. ½ S. W. ¼ sec. 30, S. E. ¼ N. W. ¼ sec. 30, all of section 31, in township 14 south, of range one west, and S. ½ sec. 36, N. E. ¼ of N. W. ¼ sec. 36, N. E. ¼ of sec. 36, and S. W. ¼ sec. 35, in township 14 south, range 2 west, and the N. ½ sec. 1, N. E. ¼ of S. E. ¼ sec. 1, N. E. ¼ of sec. 2, N. ½ of S. ½ of sec. 2, N. ½ of S. ½ of sec. 3, and N. W. ¼ sec. 3, in township 15 south, range 2 west, containing in the aggregate 2,634.16 —, of which 2,580.16 acres are outside of Willow Lake.

It is therefore considered, ordered, adjudged, and decreed that said lands be sold at the front door of the court-house in said county of Chicot, on Thursday, the 14th day of March, 1878, upon the
14 notice being given required by law in sales under execution and upon the following terms—that is to say, one-half cash and the balance in eight months, a lien to be retained on the premises to secure the deferred payment; and it is further considered, ordered, adjudged, and decreed that James R. Martin be, and he is hereby, appointed a commissioner to make said sale, and will report of his proceedings hereunder at the next term of this court, to which time this cause is continued; to which judgment of the court the said John S. Whitaker, as such executor, excepts and prays an appeal, which is granted.

EXHIBIT "B" TO BILL.

Afterwards, to wit, on February 5th, 1879, the following order was made:

EMMA J. WRIGHT
vs. } 68.
SAMUEL R. WALKER.

It is ordered by the court that R. M. Gaines, Esq., be, and
15 he is hereby, appointed commissioner in the place and stead of J. R. Martin, Esq., to make sale of the lands mentioned in the decree heretofore rendered in this cause.

EXHIBIT "C" TO BILL.

In the Circuit Court of Chicot County. In Chancery.

CHARLES W. FRY, as Receiver of the Estate of Junius W. Craig, Deceased, and Emma J. Wright, Susan R. Walker, *et al.*,
v.
JOHN S. WHITAKER, Executor of H. F. Walworth, Deceased, and RICHARD H. STUART. } Suit in Equity.

In the above-entitled cause it is hereby agreed that the proceeds of any sale or sales that may be made under any order or orders of sale or decree of the court aforesaid shall be paid into said court by the master or commissioner appointed by said court, sitting
16 in chancery or at chambers, for the sale of the property or

any part thereof ordered or decreed to be sold by said court in said cause and held by said court until the disposition of an appeal taken by said John S. Whitaker in said cause to the supreme court of this State and now pending is disposed of and the mandate of said supreme court therein is filed in the office of the clerk of said circuit court, and then only in pursuance of such mandate in the further proceedings in said circuit court.

C. H. CARLTON AND
W. W. WILSHIRE,
Atty's for Whitaker et al.
D. H. REYNOLDS,
Att'y for Receiver.

Endorsed: Chas. W. Fry, as receiver, *et al. v.* John S. Whit-
17 aker *et al.* Agreement of counsel that proceeds arising from sale of property be paid into and held by the court until final disposition of an appeal to the supreme court. Filed in my office this Feb'y 27th, 1879. Geo. T. Wilkinson, clerk.

EXHIBIT D TO BILL.

In the Chicot Circuit Court. July Term, 1879.

EMMA J. WRIGHT, as Ex'r'x, &c., *v.* SAMUEL R. WALKER & Others. } 68. Report of Sale.

In pursuance and in virtue of the decretal orders of this court made in the above-entitled cause at the January term, 1879, by which it was, among other things, ordered and adjudged that all and singular the premises mentioned in the complaint in this cause and hereinafter described, or so much thereof as might be
18 sufficient to raise the amount decreed to the plaintiff and the costs in this case, *to* be sold at public auction by Richard M. Gaines as commissioner appointed for that purpose, I, the said Richard M. Gaines, commissioner aforesaid, do certify and report that I advertized the premises to be sold by me at public auction at the front door of the court-house, in the town of Lake Village, within the hours for judicial sales, on the first day of May, 1879, and that I caused notice of said sale to be duly and publicly advertised by causing printed notices thereof to be posted up at the court-house door and five other public places in Chicot county, one of which was on the premises to be sold, and by publishing said notice for two insertions before the day of sale in the Arkansas City Post, a weekly newspaper published at Arkansas City, there being
19 no paper published in the county of Chicot at the time, which notice contained a brief description of the premises to be sold and the terms of sale. A printed copy of said notice is herewith filed, marked Exhibit "A," and made part of this report.

And I do further report that on said first day of May, 1879, the day on which the said premises were so advertised to be sold as aforesaid, I attended at the time and place fixed for said sale and

exposed said premises for sale at public auction to the highest bidder on the terms mentioned in said decree and said notice for sale, first asking if any one desired to bid for any particular part or portion of said land and offering to sell in parts or parcels if any one desired to bid for any such part, and, there being no bidders for any part of said lands less than the whole tract, the whole of said tract was then offered and exposed to sale at public auction as aforesaid,
and the said premises were then and there fairly struck off to
20 William P. Halliday for the sum of twelve hundred dollars,
he being the highest bidder therefor and that being the highest sum bid for the same.

And I do further certify and report that the said William P. Halliday having paid the sum of six hundred dollars, the cost part of his bid, I have executed and acknowledged and have ready for approval my deed as such commissioner for said premises to said William P. Halliday as purchaser thereof, in which deed a lien is reserved for the six hundred dollars balance of purchase-money.

And I do further certify and report that the premises so sold and conveyed as aforesaid are described in the decrees of sale and in the deed so executed by me as aforesaid as follows:

The S. E. $\frac{1}{4}$ sec. 30, E. $\frac{1}{2}$ S. W. $\frac{1}{4}$ sec. 30, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ sec. 30, all sec. 31, all in T. 14 S., R. 1 west, and S. $\frac{1}{2}$ sec. 36, N. E. $\frac{1}{4}$
of N. W. $\frac{1}{4}$ sec. 36, N. E. $\frac{1}{4}$ sec. 36, and S. W. $\frac{1}{4}$ sec. 35, all in
21 T. 14 S., R. 2 west, and N. $\frac{1}{2}$ sec. 1, N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of sec. 1,
N. E. $\frac{1}{4}$ sec. 2, N. $\frac{1}{2}$ of S. $\frac{1}{2}$ sec. 2, N. $\frac{1}{2}$ of S. $\frac{1}{2}$ sec. 3, and N. W. $\frac{1}{4}$ sec. 3, all in T. 15 S., R. 2 west, containing 2,634.16 acres in all, and 2,580.16 acres outside of Willow Lake, and situated in Chicot county, Kansas.

And I bring here into court the sum of six hundred dollars, the cash part of said bid and purchase, and do report that owing to some irregularities and defects in advertisements made by a former commissioner in this case and by me —— several advertisements were made, the bill for which amounts to the sum of $——, and that the costs of the officers of court amount to the sum of $——.

All of which my actings and doings as such commissioner, including my said —, are hereby respectfully reported to this court, with the request that the same may be duly examined, considered, and
approved, and my compensation as such commissioner be
22 fixed, and directions for paying over the money in my
hands be made.

R. M. GAINES,
Commissioner.

EXHIBIT A.

Commissioner's Sale.

Notice is hereby given that, in pursuance of the authority and directions contained in the several decretal orders of the Chicot circuit court, in chancery, rendered in the cause pending in said court (No. 68), wherein Emma J. Wright, ex'tr-, &c., is plaintiff and Samuel R. Walker and others are defendants, the undersigned, as commis-

sioner of said court, will offer and sell at public outcry to the highest bidder, at the front door of the court-house, in the town of Lake Village, within the hours for judicial sales, on the first day of May, 1879, the following-described tracts or parcels of land, to wit:

Southeast quarter of section 30, east half of southwest quarter of section thirty-one, southwest quarter of section thirty, all of section thirty-one, all in township fourteen south, range one west;
23 and the south half of section thirty-six, northeast quarter of northwest quarter of section thirty-six, northeast quarter of section thirty-six, and southwest quarter of section thirty-five, all in township fourteen south, range two west; and the north half of section one, northeast quarter of the southeast quarter of section one, northeast quarter of section 2, north half of south half of section two, north half of south half of section three, and the northwest quarter of section three, all in township fifteen south, range two west, two thousand six hundred and thirty-four $\frac{16}{100}$ acres, two thousand five hundred and eighty $\frac{16}{100}$ outside of Willow Lake.

Terms of sale: One-half of the purchase-money cash, the balance in eight months from day of sale, and a lien retained on the premises sold for the balance of the purchase-money.

3, 29, '79.

R. M. GAINES,
Commissioner.

24 Endorsed: ≠ 68. Emma J. Wright, as ex't'x, &c., *v.* Samuel R. Walker & others. Report of sale. Filed in open court July 15, 1879. Geo. T. Wilkinson, clerk.

EXHIBIT D[1].

Deed.

Richard M. Gaines, commissioner, to Wm. P. Halliday.

This indenture, made this first day of May, 1879, between Richard M. Gaines, as commissioner in the action hereinafter mentioned, of Chicot county, of the first part, and William P. Halliday, of the city of Cairo, in the State of Illinois, of the second part, —:

Whereas at the January term, 1878, of the Chicot circuit
25 court, in chancery, it was, among other things, ordered, adjudged, and decreed by said court, in a certain action then pending in said court between Emma J. Wright, as executrix, &c., plaintiff, and Samuel R. Walker and others, defendants, being No. 68 on the chancery docket, that all and singular the premises mentioned in the complaint in said action and in said decree described, or so much thereof as might be sufficient to raise the amount due to the plaintiff for principal, interest, and costs in said action, be sold at public auction according to the course and practice of said court, and the said Richard M. Gaines was, by subsequent order and decree of said court, made at the January term, 1879, appointed as commissioner of said court to make such sale, after giving notice of such sale, as in said order provided and on the terms fixed in said

decrees; and whereas the said commissioner, in pursuance of
26 the orders and decrees of said court, did, on the first day of May, 1879, sell at public auction, at the front door of the court-house in the town of Lake Village, the premises in the said orders and decrees mentioned, due notice of the time and place of such sale being first given agreeably to said decrees, at which sale the premises hereinafter described were struck off to the said party of the second part for the sum of twelve hundred dollars, one-half cash and balance in eight months from day of sale, that being the highest sum bid for the same:

Now, this indenture witnesseth: That the said commissioner, the party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid, and in pursuance of the orders and decrees of said court, and in conformity to the statutes in such cases made and provided, and also in consideration of the premises and of the said sum of money so bidden as aforesaid, one-
27 half of which having been first duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the balance to be paid in eight months from day of sale, as aforesaid, has bargained and sold and by these presents does grant, bargain, sell, and convey unto the said party of the second part all of the following-described lands situate in the said county of Chicot, to wit:

The S. E. ¼ sec. 30, E. ½ of S. W. ¼ sec. 30, S. E. ¼ of N. W. ¼ sec. 30, and all of section 31, all in township fourteen south, range one west, and the S. ½ sec. 36, N. E. ¼ of N. W. ¼ sec. 36, N. E. ¼ sec. 36, and the S. W. ¼ sec. 35, all in township fourteen south, range two west, and the N. ½ sec. 1, N. E. ¼ of S. E. ¼ sec. 1, N. E. ¼ sec. 2, N. ½ of S. ½ sec. 2, N. ½ of S. ½ sec. 3, and the N. W. ¼ sec. 3, all in township fifteen south, range two west, containing 2,634.16 in all and 2,580.16 acres outside of Willow Lake, together with all the
28 privileges and appurtenances thereto belonging or in anywise appertaining; to have and to hold all and singular the premises above mentioned and described and hereby conveyed or intended so to be unto the said party of the second part, his heirs and assigns, to his and their only proper use and benefit and behoof forever; and a lien is hereby expressly reserved to secure the payment of the balance of the purchase-money, as in said decree and notice of sale mentioned.

In witness whereof the said party of the first part, commissioner as aforesaid, has hereunto set his hand and seal the day and year first above written.

R. M. GAINES, [SEAL.]
Commissioner.

STATE OF ARKANSAS, *County of Chicot:*

On this sixth day of May, 1879, before me, George T. Wil-
29 kinson, clerk of the circuit court within and for the county of Chicot, in the State of Arkansas, appeared in person Richard M. Gaines, to me personally well known as the person whose name appears upon the within and foregoing deed of conveyance as

the party grantor, and stated that he executed the same for the consideration and purposes therein mentioned and set forth, and at his request I do hereby so certify.

In testimony whereof I have hereunto set my hand as such clerk in the county of Chicot aforesaid on this sixth day of May, 1879.

GEO. T. WILKINSON, *Clerk.*

Endorsed upon above deed and acknowledgment is order made thereon, which order is Exhibit D[3].

30 EXHIBIT D[2].

EMMA J. WRIGHT, as Ex'tr'x, } 68.
v.
SAMUEL R. WALKER *et al.* }

On this day came up for consideration of the court the report of Richard M. Gaines, the commissioner heretofore appointed to make sale of the property in this suit mentioned, and it appearing from said report that said commissioner had duly advertised the said lands for sale, as required by law and by the order of this court, and had offered the same for sale at public auction, and that at said sale William P. Halliday became the purchaser thereof for the price and sum of twelve hundred dollars, and that the said purchaser had paid six hundred dollars, the half of the sum bid, being the amount of the cash payment under the order of sale, and that the commissioner had in due form of law executed a deed to said purchaser,
31 in which a lien is reserved in pursuance of order of sale, and it appearing to the court that the said commissioner had in all things, in the discharge of his duties as such commissioner, conformed to law and the order of this court, and that the sale, including the deed, should be in all things approved and confirmed—

It is therefore ordered, adjudged, and decreed by the court that the report of said commissioner and all his actings and doings as such commissioner be, and the same are, in all things approved and confirmed by this court.

And it is further ordered, adjudged, and decreed that the said commissioner receive the sum of $50 for his compensation as such commissioner, and this after paying the costs of sale and his said fee of $50 that he retain the remainder until the further order of this court.

EXHIBIT D[3].

32 EMMA J. WRIGHT, as Executrix, &c., } 68.
vs.
SAMUEL R. WALKER and Others. }

This day came up for consideration the report of Richard M. Gaines, as commissioner appointed to make sale of the lands in this suit mentioned, and said report having been examined and in all things approved the deed executed by said commissioner to William P. Halliday, the purchaser of said property, being presented to the

court for its examination, the court, upon examination of said deed, finds the same formal and sufficient to pass to such purchaser a full, complete, and perfect title to said property, and that the same should be approved.

It is therefore ordered, adjudged, and decreed that the acts and doings of said commissioner in making said sale and in executing said deed and the deed itself be, and the same are, in all things approved and confirmed, and this approval, it is directed,
33 shall be entered of record and endorsed on said deed and recorded with it.

Endorsed: William P. Halliday *v.* Richard H. Stuart and John S. Whitaker, &c. Filed and summons issued this Jan'y 23, 1885. Geo. T. Wilkinson, clerk.

Be it remembered that at a regular January term, 1885, of the circuit court of Chicot county, Arkansas, on the chancery side thereof, on the 23rd day of January, 1885, the same being a day of said term, present and presiding, the Honorable John M. Bradley, judge—when the following, among other, proceedings were had, to wit:

34 WILLIAM P. HALLIDAY
vs.
RICHARD H. STUART and JOHN S. WHITAKER.

On this day came the plaintiff, by his attorney, D. H. Reynolds, Esq., and presented his petition praying for an order injoining and restraining the defendants, Richard H. Stuart and John S. Whitaker, and their agents and attorneys, from attempting to take possession of certain lands therein mentioned and from seeking or obtaining any writ of possession for same; and thereupon came C. H. Carlton, Esq., and entered the appearance of said defendants, and the court upon hearing the complaint and being of the opinion that said injunction should be granted—

It is therefore considered, ordered, adjudged, and decreed by the court that upon the filing of a good and sufficient bond by the plaintiff in the sum of $150.00, conditioned according to law,
35 to be approved by the clerk of this court in vacation, that the defendants, Richard H. Stuart and John S. Whitaker, and their agents and attorneys, be enjoined and restrained from attempting to take possession of the following-described lands, to wit:

S. E. ¼ sec. 30; E. ½ of S. W. ¼ sec. 30; S. E. ¼ of N. W. ¼ of sec. 30; all sec. 31, all in T. 14 S., R. 1 W.; and S. ½ of sec. 36 and S. W. ¼ sec. 35, in T. 14 S., R. 2 west; N. ½ of sec. 1, N. E. ¼ of the S. E. ¼ sec. 1, N. E. ¼ sec. 2, N. ½ of the S. ½ of sec. 2, N. ½ of the S. ½ of sec. 3, and the N. W. ¼ sec. 3, all in T. 15 S., R. 2 west, the whole containing 2,634.16 acres, and from seeking or obtaini-g any writ of possession for same until the further order of this court.

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court within and for
36 the county and State above mentioned, do hereby certify that the above and foregoing 20 pages of writing contain a true

and correct copy of all the record and proceedings in the cause therein mentioned, as the same appear of record and on file in my office.

Witness my hand and the seal of said circuit court hereto affixed on this 2nd day of April, A. D. 1885.

Seal of Circuit Court Chicot Co., Ark's.

GEO. T. WILKINSON, *Clerk*,
By C. L. MEAD, *D. C.*

Endorsed: Filed April 13, 1885. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

37 UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 13th day of April, anno Domini one thousand eight hundred and eighty-five, at the United States court room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on July 3rd, 1885:

WILLIAM P. HALLIDAY
v. } 749.
R. H. STUART *et al.*

Come the defendants, by Mark Valentine, Esq., their solicitor, and on motion of said solicitor they are given until the first Monday in September in which to file an answer.

38 And on September 7th, 1885, the following answer was filed:

In the Circuit Court of the United States for the Eastern District of Arkansas.

WM. P. HALLIDAY
v. } Answer.
R. H. STUART *et al.*

Comes the defendant-, Richard H. Stuart and John S. Whitaker, and for answer say:

They admit that at the January term, 1878, of the chancery court of Chicot county a decree was rendered in a certain suit then pending in said court, wherein Emma J. Wright, as executrix of the last will & testament of Junius W. Craig, was plaintiff and these defendants and others were defendants.

That under said decree a sale was made of the lands described in the complaint herein, and that at said sale the complainant, Wm. P. Halliday, purchased said lands, and that said sale was confirmed, as alledged in said complaint.

39 But defendants allege that one of these defendants, John S. Whitaker, who was executor of the last will and testament of Horace F. Walworth, deceased, one of the defendants in that suit, appealed from said decree to the supreme court of the State, and

these defendants are advised that said appeal by said Whitaker, as executor, operated as a supercedias of said decree.

These defendants deny that pending said appeal an agreement was entered into between these defendants and the plaintiff in said suit by which these defendants agreed that the proceeds of any sale of property under said decree should be paid into court and there held in place of the property to abide the decision of the case in appeal; but defendants allege that they at all times relied upon the reversal of said decree in the supreme court upon their appeal and the further proceedings thereunder for the establishment and vindication of their rights in the premises.

Defendants, further answering, say that at the May term, 1880, of the supreme court of Arkansas said decree was reversed for
40 the reasons, among others, that there was no party plaintiff to said suit, and by the mandate of said court said cause was remanded to the Chicot chancery court for further proceedings therein.

A duly certified copy of said mandate is herein annexed and made part hereof, marked Exhibit "A."

That at the January term, 1882, of said chancery court a decree was rendered upon said mandate by which the former decree in said cause rendered at the January term, 1878, and all proceedings thereunder were set aside and held for naught.

A duly certified copy of said decree is hereto annexed and made part hereof, marked Exhibit "B."

That at a subsequent day of said January term, 1882, of said Chicot chancery court, John G. B. Simms having taken out letters of administration *de bonis non*, with the will annexed, on the estate of the said Junius W. Craig, a decree was rendered in favor of said administrator foreclosing the same mortgage the foreclosure
41 of which had been attempted by the decree of January, 1878, under which Halliday purchased, as stated in said complaint, and which had been reversed and set aside, as hereinbefore stated.

A duly certified copy of said decree is hereunto annexed and made part hereof, marked Exhibit "C."

That at the sale ordered by said decree these defendants purchased said property at the sum and price of two thousand dollars, and received a deed therefor from the commissioner appointed to make said sale.

A duly certified copy of said deed is hereto annexed and made part hereof, marked Exhibit "D."

That at the July term, 1882, of said chancery court the acts and doings of said commissioner in making said sale and in executing said deed were in all things approved and confirmed and a writ of possession of said premises was awarded to these defendants.

A duly certified copy of said order of confirmation is hereto annexed and made part hereof, marked Exhibit "E."

Defendants deny that plaintiff has been since that time or
42 that he is now in possession of said premises, either actual or constructive, but, on the contrary, that these defendants, ever

since said writ of possession was awarded to them, have been in full possession of the same so far as the circumstances would permit.

That no one has been in the actual occupancy of said lands, and these defendants have not occupied the same, for the reason only that pending the appeal of said cause to the supreme court, as hereinbefore stated, plaintiff removed from said premises the buildings thereon, so as to render the same uninhabitable except at great expense to these defendants, but that the defendants have at all times asserted and exercised their right of ownership in said property with the knowledge of plaintiff, and have regularly paid the taxes thereon.

That the amounts paid out by them for taxes on said property are as follows:

In the year 1881	$43 38
" " " 1882	241 25
" " " 1883	97 01
" " " 1884	94 27
Making in the aggregate the sum of	$475 91

43 Wherefore defendants pray that said injunction be dissolved and that defendants' possession of said premises be quieted; or—

In the event the court should sustain said injunction that defendants' lien for taxes be decreed and enforced, that said property be sold to satisfy the same, and for all proper relief.

MARK VALENTINE,
Sol. for Def'ts.

Mark Valentine states that the matters and things set forth in the foregoing answer are true to the best of his knowledge and belief. Sept. 7th, 1885.

MARK VALENTINE.

Subscribed and sworn to before me this 7th day of September, 1885.
RALPH L. GOODRICH, *Clerk*,
By W. P. FEILD, *D. C.*

EXHIBIT "A" TO ANSWER.

STATE OF ARKANSAS, *set:*

In the Supreme Court.

Be it remembered that at a term of the supreme court of
44 the State of Arkansas, begun and held at the court-house, in the city of Little Rock, on the 24th day, being the fourth Monday of May, A. D. 1880, amongst others were the following proceedings, to wit, on the 30th day of October, A. D. 1880, a day of said term:

JOHN S. WHITAKER, Ex'r, Appellant,
vs.
EMMA J. WRIGHT, Ex., Appellee.
} Appeal from Circuit Court. In Chancery.

This cause came on to be heard upon the transcript of the record of the circuit court of Chicot county, in chancery, and was argued by solicitors; on consideration whereof it is the opinion of the court that there is error in the proceedings and decree of said circuit court in chancery in this cause in this, that said circuit court in chancery erred in striking out a part of the answer as stated in the opinion, and also in sustaining the demurrer to the cross-bill and in decreeing in favor of the complainant.

It is therefore ordered and decreed by the court that the decree of *of* said circuit court in chancery in this cause rendered be, and the same is hereby, for the error aforesaid, reversed, annulled, and set aside, with costs, and that this cause be remanded to said
45 circuit court in chancery for further proceedings to be therein had, according to the principles of equity and not inconsistent with the opinion herein delivered, with instructions that an administrator *de bonis non* of J. W. Craig may be appointed, if there is none, and that he be made a party complainant.

It is further ordered & decreed — recover of said — all — costs in this court in this cause expended and have execution thereof.

In testimony that the above is a true copy of the decree of said supreme court rendered in the case therein stated, I, W. P. Campbell, clerk of said supreme court, hereto set my hand and affix the seal of said supreme court, at my office, in the city of Little Rock, this 18th day of Feb'y, A. D. 1887.

Seal of Supreme Court of Arkansas.

W. P. CAMPBELL, *Clerk.*

EXHIBIT B.

STATE OF ARKANSAS, *County of Chicot:*

At a term of the Chicot circuit court, in chancery, begun and held on the 30th day of January, A. D. 1882, the following,
46 among other, proceedings were had, to wit:

JOHN G. B. SIMMS, Adm'r *De Bonis Non*, &c.,
against
SAMUEL R. WALKER & Others.

On this day came R. H. Stuart & John Whitaker, as executors, &c., defendants in this cause, &, by leave of the court, file here their motion to set aside the decree heretofore rendered in this cause and the sale and order of confirmation made thereunder.

JOHN G. B. SIMMS, Adm'r *De Bonis Non*, &c.,
against
SAMUEL R. WALKER & Others.

And now, on this day, came on to be heard the motion of R. H. Stuart and Jno. S. Whitaker, executors, &c., to annul and set aside

the decree of foreclosure heretofore made in this cause and the sale and order of confirmation made thereunder and on the mandate of the supreme court, and was argued by counsel; and it appearing
47 that the decree of foreclosure & sale was rendered when there was no representative of the estate of Junius W. Craig, dec'd, who could prosecute said suit, and that the sale was made and confirmed when the cause was pending in the supreme court on the appeal of John Whitaker, as executor of Horace F. Walworth, dec'd, and that this court had no jurisdiction, &c., on consideration whereof, the court doth adjudge, order, and decree that said decree and sale and order of confirmation are null & void, and that the same be set aside.

STATE OF ARKANSAS, *County of Chicot:*

I, George T. Wilkinson, clerk of the circuit court within and for the county and State aforesaid, do hereby certify that the preceeding page and the above writing on this page contain true and correct copies of the orders made at the Jan'y term, 1882, of the Chicot circuit court on the 30th day of January, 1882, in the cause therein mentioned as the same appear of record in Record Book of the proceedings of said court E, on page 480, in my office.
48 Witness my hand and the seal of said court hereto affixed this the 4th day of June, 1885.

[Seal Circuit Court, Chicot County, Arkansas.]

GEO. T. WILKINSON, *Clerk.*

EXHIBIT "C."

Be it remembered that at the regular January term, 1882, of the circuit court of Chicot county, Arkansas, on the chancery side thereof, on the 30th day of January, 1882, the same being a day of said term—present, the Hon. T. F. Sorrells, chancellor—when the following, among other, proceedings, were had, to wit:

JOHN G. B. SIMMS, Adm'r D. B. N. & C. F. A., &c.,
against
SAMUEL R. WALKER & Others.
} Decree.

Now, on this day, this cause coming on for final hearing and determination, and it appearing that Jno. G. B. Simms has been by the probate court of Chicot county duly appointed administrator, with the will annexed, of Junius W. Craig, deceased, and that he has duly qualified as such, and that he is entitled to and has been by the former order of this court substituted as the plaintiff herein, and that the said Jno. G. B. Simms, as administrator as aforesaid, is entitled to have decree of foreclosure of the mortgage set out in
49 the original bill herein, subject to the claims of the defendants, Richard H. Stewart and John S. Whitaker, as executor of Horace F Walwerth, deceased, as hereinafter mentioned and set forth;

And it appearing that this suit is founded upon three several promissory notes executed by the defendant, Samuel R. Walker, to

the said Junius W. Craig, in his lifetime, for the purchase-money of the lands and premises mentioned in the original bill of complaint herein, and that said notes are still due, unpaid, and that said notes, with interest to this date, amount to the sum of $43,425.00, and that said debt is a lien on the lands mentioned in said complaint;

And it further appearing that since the institution of this suit the defendant, Samuel R. Walker, has become bankrupt, and that this cause has been revived against E. E. Norton, as assignee of such bankrupt, and that the appearance of said assignee has been at a previous term entered, and that said assignee has failed to further plead, answer, or demur to the complaint herein, and that the same has been taken as confessed as to him: It is therefore ordered,
50 adjudged, and decreed that the plaintiff, John G. B. Simms, as administrator as aforesaid, do have and recover of and from the said E. E. Norton, as assignee as aforesaid, the sum of forty-three thousand four hundred and twenty-five dollars, $43,425.00, with interest thereon from this date at the rate of — per cent. per annum, and that the same be, and the same is hereby, declared to be a lien upon the following lands and premises, to wit: S. E. ¼ of sec. 30 (southeast q'r sec. thirty), east half of S. W. ¼ sec. 30, S. E. ¼ of N. W. ¼ sec. 30, all of sec. 31, in township 14 south, of range 1 west, and S. ½ of sec. 36, N. E. ¼ of N. W. ¼ sec. 36, N. E. ¼ of sec. 36, and S. W. ¼ of sec. 35, in township 14 S., R. 2 west, and the N. ½ of sec. (1) one, N. E. ¼ of S. E. ¼ of sec. (1) one, N. E. ¼ of sec. (2) two, N. ½ of S. ½ of sec. (2) two, N. ½ of the S. ½ of sec. (3) three, N. W. ¼ of sec. (3) three, in township 15 S., R. 2 west, containing in the aggregate 2,634.16 acres, of which 2,580.16 acres are outside of Willow Lake, being the lands set out and described in the original bill of complaint herein.

51 And it is further ordered and decreed that unless the said E. E. Norton, as assignee as aforesaid, pay or cause to be paid to said complainant the said sum of forty-nine thousand one hundred & forty dollars, with interest as aforesaid, on or before the first day of May next, A. D. 1882, then that the equity of redemption of the said E. E. Norton, as assignee, and all persons claiming under him or the said Walker be forever barred and foreclosed, and that said lands be sold to satisfy this decree.

And it is further ordered that Johnson Chapman be, and he is hereby, appointed the commissioner of this court to make such sale; and such commissioner is hereby authorized and directed that in default of the payment of said sum of forty-three thousand four hundred and twenty-five dollars at the time limited he sell such property at public auction at the front door of the court-house in the town of Lake Village on Monday, the 10th day of July next, A. D. 1882, said sale to be on a credit of three months, the
52 purchaser giving bond with approved security for the amount of the purchase-money, and a lien to be retained on the land to secure the same, notice of the time, terms, and place of said sale to be given, as required by law, in sales under executions, and that such commissioner report his proceedings hereunder to the next term hereof; and it further appearing from the pleadings herein

that under and by virtue of a purchase at tax sale made in 1869, as well as by a purchase under a decree of foreclosure in favour R. H. Stuart, made on the first Friday after the fourth Monday in September, 1871, as appears of record in this court, that the defendant, John S. Whitaker, as executor of Horace F. Walworth, deceased, and the defendant, Richard H. Stuart, died on or about the first day of May, 1867, enter into possession of said lands and premises and have so remained in possession since, and that by virtue of such possession have received rents and profits arising from said premises, and that under and by virtue of such titles and possession have paid the taxes on said premises and kept said premises in good repair, and that the expenditures so made on account of such
53 taxes and repairs are greatly in excess of the rents and profits derived from the same, and that the said defendants, John S. Whitaker, as executor as aforesaid, and R. H. Stuart, are entitled to be first paid out of the proceeds of the sale of said lands for any excess so due them, & that the same is and should be a first lien on said land, it is therefore ordered, adjudged, and decreed that the balance found due to said John S. Whitaker, as executor as aforesaid, & R. H. Stuart be declared a first lien on said lands, to be first paid out of the proceeds of the sale herein ordered.

And, for the purpose of ascertaining what balance is due said defendants, this case is referred to R. M. Gaines, Esqr. special master of this court, and he is hereby directed to take proof of the several amounts paid out and expended by said defendants on account of taxes, costs, or otherwise on account of said lands & premises, and to take an account and ascertain how much rents and profits accrued to said defendants from said lands, and so determine what balance is due said defendants on account of said expenditures, and that he file a report of his proceedings with the clerk of this
54 court on or before the 3rd day of July next.

STATE OF ARKANSAS, }
County of Chicot. }

I, George T. Wilkinson, clerk of the circuit court within and for the county and State aforesaid, do hereby certify that the above writing on this page and the foregoing five pages contain a true & correct copy of a certain decree rendered and entered of record in the cause therein mentioned, as the same appears of record in Chancery Record Book "D," on pages 480, 481, 482, & 483, in my office.

Witness my hand and the seal of said court hereto affixed on this 9th day of December, 1886.

Seal Circuit Court of Chicot County, Arkansas.

GEO. T. WILKINSON, *Clerk*,
By C. L. MEAD, *D. C.*

EXHIBIT D.

Deed.

Johnson Chapman, com'r, to Richard H. Stuart & heirs of Horace F. Walworth.

Whereas heretofore, to wit:

55 At the January term, A. D. 1882, of the Chicot circuit court, in chancery, in a certain cause therein pending, No. (68), wherein Jno. G. B. Simms, as administrator *de bonis non*, testaments annexed, of the estate of Junius W. Craig, dec'd, is plaintiff and E. E. Norton, as assignee of Samuel R. Walker, and others are defendants, decree was rendered in favor of said plaintiff in the sum of $——, which was thereby declared to be a lien on the lands mentioned and described in said decree, which are as follows, to wit: Southeast quarter of section (30) thirty, east half of southwest quarter — section thirty (30), southeast quarter of northwest quarter of section thirty (30), all of section thirty-one (31), in township 14 south, of range one west; south half of section thirty-six (36), northeast quarter of north W. ½ of section thirty-six (36), N. E. quarter of thirty-six (36), and southwest quarter of thirty-five (35), in township 14 south, range 2 west, and north half of one (1), northeast quarter of southeast quarter of one (1), northeast quarter of

56 two (2), north half of south half of two (2), north half of south half of three (3), and northwest quarter of three (3), in township 15 south, range 2 west, and said lands were ordered sold to satisfy decree, after giving notice of the time, place, and terms of sale, as required by law for sale of real estate under execution, and the undersigned was appointed a commissioner to make such sale;

And whereas I did proceed, as required by law and such decretal order, to give notice by posting printed notices at six public places in the county of Chicot, one of which was on the court-house door and one on the premises to be sold, that I would sell at the front door of the court-house, in Lake Village, on Monday, the 10th day of July, 1882, between the hours for judicial sales, the lands above described, the purchaser executing bond, with approved security, for the purchase-money on a credit of three months;

57 And whereas I did appear at the time and place named in said notices and make such sale strictly in accordance with the law, the order of court, and the above-mentioned notices, and at such sale Richard H. Stuart and John S. Whitaker, as agents and attorneys for the heirs of Horace F. Walworth, dec'd, bid and offered the price of two thousand dollars for the whole of said land (they having been offered first in tracts of forty acres and no one offering to buy them in that way), the same were then and there stricken off to them for the price aforesaid, report of all which having been by me made to said Chicot circuit court, in chancery, and said report having been in all things approved and confirmed;

And whereas said purchasers were declared by the order of court to be entitled to have refunded to them first out of proceeds of said

sale such sums of money as might be found due them for taxes and repairs, after deducting rents and profits, and R. M. Gaines was appointed special master to determine said sums; and whereas he has made his report herein, showing a sum largely in excess of
58 the bid for said lands to be so due said purchasers, and they desiring that their said bid of $2,000.00 be credited on said amount so shown to be due them as aforesaid, and they asking and demanding of me a deed to said lands:

Now, therefore, in consideration of the premises aforesaid, I have granted, bargained, and sold, and do hereby grant, bargain, sell, and convey, unto Richard H. Stuart and John S. Whitaker, as agent and attorney for the heirs of Horace F. Walworth, dec'd, all the right, title, interest, and claim in and to said above-described lands, which I am by law and the decretal order of said court authorized and empowered to sell:

To have and to hold the same unto the said parties aforesaid and to their heirs, executors, administrators, and assigns forever.

Witness my hand and seal as such commissioner this 15th day of July, A. D. 1882.

JOHN. CHAPMAN, [SEAL.]
Commissioner.

STATE OF ARKANSAS, }
County of Chicot. }

59 On this the 15th day of July, 1882, before me, Geo. T. Wilkinson, clerk of the circuit court within and for the county and State aforesaid, personally appeared Johnson Chapman, the commissioner in said deed mentioned, and grantor, whose name appears to the said above and foregoing deed, & acknowledged that he had executed the same for the uses, purposes, and considerations therein mentioned and set forth.

Witness my hand and the seal of said court hereto affixed this 15th day of July, A. D. 1882.

[SEAL.] GEO. T. WILKINSON,
Circuit Clerk.

Endorsed: Approved in open court this — 15, 1882. T. F. Sorrels. Filed for record July 15th, 1882. Geo. T. Welkerson, clerk. Recorded July 24th, 1882. Geo. T. Welkerson, cl'k, by W. W. Welkinson, D. C.

STATE OF ARKANSAS, }
County of Chicot. }

I, Geo. T. Wilkinson, clerk of the circuit court & *ex officio*
60 recorder within and for the county and State aforesaid, do hereby certify that the above and foregoing (4) four pages of writing contain a full, true, and correct copy of a certain deed from Johnson Chapman, com'r, to Richard H. Stuart and heirs of Horace

F. Walworth, dec'd, as the same appears of record in Deed Record Book "B" 1, on pages 206, 207, & 208, in my office.

Witness my hand & the seal of said court hereto affixed on this 9th day of December, 1886.

Seal Circuit Court, Chicot County, Arkansas.

GEO. T. WILKINSON, *Clk & Rec.*,
By C. L. MEAD, *D. C. & Rec.*

EXHIBIT E.

Be it remembered that at the regular July term, 1882, of the circuit court of Chicot county, Arkansas, on the chancery side thereof, and on the 14th day of July, 1882, the same being a day of said term—present, the Hon. T. F. Sorrells, judge—when the following, among other, proceedings were had, to wit:

JOHN G. B. SIMMS, Adm'r, &c.,
against
E. E. NORTON, Assignee of Sam'l R. Walker & Others. } No. 68.

This cause came on for consideration of the court upon the report of Johnson Chapman, the commissioner appointed to make sale of the mortgaged premises described and decreed to be sold in this cause, which said report is filed with the papers in this cause, as also the report of R. M. Gaines, master, and it appearing to the court, from the examination of the report of said commissioner, Johnson Chapman, that said land had been duly advertized and sold agreeably to law and the order and decree in this cause, and that said commissioners were regular and proper—

It is therefore adjudged, ordered, and decreed that the acts of the said Johnson Chapman, commissioner as aforesaid, in making said sale and executing said decree be, and the same are, in all things approved & confirmed and directed to be entered of record; and said commissioner having produced his deed of conveyance for
62 said land and acknowledged the same in open court, it is ordered that a writ of possession be awarded the purchaser, as set forth in said report; and it is further ordered that R. M. Gaines, master, and Johnson Chapman, commissioner, be each allowed a fee of fifty dollars for their services in this cause.

STATE OF ARKANSAS, }
County of Chicot. }

I, Geo. T. Wilkinson, clerk of the circuit court within and for the county and State aforesaid, do hereby certify that the above writing on this page and the foregoing (1) one page contain a true and correct copy of a certain order made and entered in the cause therein mentioned on the 14th day of July, 1882, as the same appears of

record in Chancery Court Record Book "D," on page 498, in my office.

Witness my hand & the seal of said court hereto affixed on this 9th day of December, 1886.

Seal Circuit Court, Chicot County, Arkansas.

GEO. T. WILKERSON, *Clerk*,
By C. L. MEAD, *D. C.*

63 Endorsed: Filed September 7, 1885. Ralph L. Goodrich, clerk.

64 UNITED STATES OF AMERICA,
Western Division of Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 11th day of April, A. D. 1887, at the United States court room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on May 25, 1887:

W. P. HALLIDAY
v.
R. H. STWART and JOHN S. WHITAKER.

Comes the complainant, by D. H. Reynolds, Esq., his solicitor, and come the defendants, by Mark Valentine, Esq., their solicitor, and thereupon this cause came on for final hearing by consent of parties, and the court, having heard all the evidence and argument of counsel and not being now well and sufficiently advised in the premises, takes time to consider of its judgment herein.

65 UNITED STATES OF AMERICA,
Western Division of Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 22 day of October, A. D. 1888, at the United States court room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge presiding and holding said court, the following proceedings were had, to wit, on March 19, 1888:

WILLIAM P. HALLIDAY
v.
RICHARD H. STUART and JOHN S. WHITAKER, as Executors of the Last Will and Testament of Horace F. Walworth, Deceased. } Decree.

This cause having heretofore been submitted and argued by counsel, whereupon, upon consideration thereof, it is now ordered, adjudged, and decreed as follows:

That the injunction heretofore granted injoining and restraining

the defendants from attempting to take possession of the lands in controversy herein be, and the same is hereby, dissolved.

66 That the sale of said lands on the first day of May, 1879, by Richard M. Gaines, as commissioner of the chancery court of Chicot county, Arkansas, under a decree of said court rendered at its January term, 1878, on the 2nd day of February of said year, and the subsequent order of said court rendered at its January term, 1879, on the 5th day of February of said year, be, and the same is hereby, declared illegal and void and the deed from said Richard M. Gaines, as such commissioner, to the complainant, William P. Halliday, the purchaser of said lands at said sale, is hereby cancelled, set aside, and for naught held.

That the title of the defendants, Richard H. Stuart and John S. Whitaker, to said lands, to wit: Southeast quarter of section thirty (30), east half southwest quarter section thirty, southeast quarter northwest quarter section thirty, all section thirty-one, all in township fourteen south, range one west; south half section thirty-

67 six, northeast quarter northwest quarter section thirty-six, northeast quarter section thirty-six and southwest quarter section thirty-five, all in township fourteen south, range two west; and north half section one, northeast quarter southeast quarter section one, northeast quarter section two, north half south half section two, north half south half section three, and northwest quarter section three, all in township fifteen south, range two west, containing two thousand six hundred and thirty-four and $\frac{16}{100}$ acres in all, of which twenty-five hundred and eighty and $\frac{16}{100}$ acres are outside of Willow Lake, and all situated in Chicot county, Arkansas, be quieted, and that they have possession thereof, and that they recover all of their costs herein expended, and have execution therefor.

68 And on the 28th day of December, 1888, the following proceedings were had, to wit:

WILLIAM P. HALLIDAY
v. } 749.
RICHARD H. STUART and JOHN S. WHITAKER.

Comes the said plaintiff, by D. H. Reynolds, Esq., his solicitor, and the defendants, by Mark Valentine, Esq., their solicitor, and the oral motion made by the said plaintiff on the 7th day of April, 1888, to vacate and set aside the decree in this cause and grant a rehearing is denied; and thereupon the said plaintiff, by his said solicitor, prayed an appeal to the Supreme Court of the United States from the decree rendered in this cause on the 19th day of March, 1888, and also an appeal from the order and decree this day rendered denying the plaintiffs' motion for a rehearing of this cause, both of which appeals are granted as prayed; and the said plaintiff

69 and defendants, by their said solicitors, agree and stipulate here in open court that the value of the land in controversy in this suit exceeds the sum of five thousand dollars, exclusive of damages and costs.

70 UNITED STATES OF AMERICA,
Western Division of Eastern District of Arkansas:

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the western division of the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original of the record and proceedings in case of W. P. Halliday *v.* R. H. Stuart *et al.*, remaining of record in my office.

The Seal of the Circuit Court, Western Division of East. Dist. Ark., U. S. A.

In witness whereof I have hereunto set my hand and the seal of said court this 27th day of September, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States of America the one hundred and fourteenth.

Attest:

RALPH L. GOODRICH, *Clerk*,
By W. P. FEILD, *D. C.*

Endorsed on cover: E. Arkansas C. C. U. S. No. 1350. William P. Halliday, appellant, *vs.* Richard H. Stuart and John S. Whitaker. Filed October 14, 1889.

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CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

WILLIAM P. HALLIDAY, Appellant,

vs.

RICHARD H. STUART and JOHN S. WHITAKER.

No. 171.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR APPELLANT.

Halliday brought his suit in equity, in the Circuit Court of Chicot County, Arkansas, against Stuart and Whitaker, who were not citizens of Arkansas, and they, at the proper time, removed the case to the Circuit Court of the United States for the Eastern District of Arkansas, where it was decided on the merits, upon complaint and answer and exhibits, etc., adversely to Halliday, who moved for a rehearing, and this motion was overruled and he appealed from the decree of the court dismissing his complaint and dissolving the injunction and overruling his motion for rehearing. (Rec., 23.)

And the errors assigned are, the court below dissolved the injunction theretofore granted Halliday when it should have continued the same and made it perpetual;

the court below declared the title of Halliday to the land in controversy illegal, and cancelled his deed thereto when it should have held his title good and valid and upheld his deed for such land; the court below sustained and quieted the title of Stuart and Whitaker to such land, when it should have held such title invalid and decreed possession of the land to Halliday. (Rec., 22, 23.)

Halliday's complaint states, he claims the land in controversy by virtue of a decree rendered in a cause on the chancery side of the Chicot Circuit Court, at the January term, 1878, No. 68, foreclosing a lien upon such land, and under this decree R. M. Gaines was appointed commissioner to make sale, and those proceedings are evidenced by copies, Exhibits A and B to the complaint. (Rec., 2, 3, for Exhibits A and B see Rec., p. 4, 5.)

On February 27, 1879, while an appeal from this decree of foreclosure was pending in the Supreme Court of Arkansas, the plaintiff in the suit, and the defendants, who were appellants in that appeal, entered into a written agreement that the proceeds of the sale so ordered should be paid into the Circuit Court, and there to be held, in lieu of the property, to abide the decision of the case on appeal, and this is shown by copy of that agreement, Exhibit C (Rec., 3, and for Exhibit C, see Rec., 5–6, and it is important to note this agreement carefully); the land was sold in due course of law, and Halliday purchased at a regular sale, and had deed made to him, and the sale was confirmed and the deed approved by the court, as evidenced by copies of the proceedings, deed, etc., Exhibits D, D^1, D^2, and D^3 (Rec. 3, and for these exhibits see Rec., 8–11). Halliday took possession of the property and has held the same to the present time, claiming it as his own (Rec., 3). Halliday is informed and believes Stuart and Whitaker claim the land by virtue of a purchase made at a sale, under a decree in such Circuit Court in such case, No. 68, at the January

term, 1882, nearly three years after Halliday's purchase, and he (H.) insists, as to him, that purchase is null and void, as he was no party to such suit and had nothing whatever to do with it, and when such sale of 1882 was made there was nothing to sell, as all the title had been passed to him (H.), and the proceeds of the sale to him were still in court to be disposed of under the agreement shown by Exhibit C (Rec., 3–4); and Stuart and Whitaker are taking steps and are threatening to secure the possession of such land, and he asks for an injunction restraining them, and the same be made perpetual, and his title quieted, etc. (Rec., 4.)

Stuart and Whitaker answer the complaint, admitting the decree of January, 1878, in the Chicot Circuit Court, sale and purchase of the land, and deed to Halliday and its confirmation, as alleged in the complaint; but they insist that as Whitaker, as executor of Walworth, one of the defendants in that suit, appealed from that decree to the Supreme Court of Arkansas, that decree was thereby suspended; a general denial of the agreement set up by Halliday (Exhibit C to his complaint) is made, and a reliance on the decree being superseded is further alleged; then follow averments of reversal of the decree of January, 1878, and a decree being entered setting aside all that was done under that decree of January, 1878, and other and further proceedings foreclosing again, another sale and the purchase of the land by S. and W., deed to them and confirmation. Possession of the land by anybody is denied, and they pray a dissolution of the injunction and *their possession* quieted; but if the injunction is sustained, they ask for a sale of the land to satisfy the taxes paid thereon by them, amounting to $475.91. (Rec., 12–14.)

Why Stuart and Whitaker or anybody else ever believed that the decree of January, 1878, was superseded by W.'s appeal, is not made apparent. The Record dis-

closes no bond or undertaking to supersede it as required by law. (Arks. Dig. of 1884 (Mansfield), sec. 1293, *et seq.*)

It is probable that they may have been mistaken in considering this as an appeal from the Probate Court, where, of course, administrators and executors are not required to give bond on appeal in certain cases (Arks. Dig., *Sup.*, secs. 1385–7). But this comes not at all under this law—it is wholly and totally a different thing. This proceeding under which Halliday claims was against lands—to enforce a lien—the decree was not against W. as executor, or personally at all, but simply to condemn the land to pay and discharge a lien. Then it is evident the case in which Halliday bought had been closed and settled long before any decree was rendered ordering another sale, the sale under which S. and W. bought.

The theory, upon which executors and administrators are relieved of giving bonds on appeals, applies only when there is a demand or charge urged upon the estate, and the general administration bond is deemed a sufficient security (Scott *v.* Searles, 1 Smed. and M., 950; 1 Lomax Exs., etc., 384, 399, 400, edn. 1841; 2 Tuck. Lec., 331), and the code of practice in Arkansas so considers it (Arks. Code Pr., 870), and so do the decisions of the Supreme Court of that State. (Johnson *v.* Duval, 27 Arks., 599, approved in Tucker *v.* West, 31 *Ib.*, 643.)

Here, however, there is or was no demand sued on or put in judgment against the estate of which Whitaker was executor, as in the Johnson–Duval case (27 Arks., *sup.*)

Indeed, Whitaker came into the suit to assert another, and as he claimed, a prior lien against this land in favor of Walworth's estate, and he was dismissed from the case on insufficient pleadings in the Chicot Circuit Court, and he appealed. Most clearly this is no such a case as would invoke this law favoring executors and administrators as to appeals. In relation to this proceeding, Whitaker stood

just as any other individual in the litigation, and without a bond to stay this decree he could not, any more than any other party to it, supersede the decree by appealing. The statute makes no exceptions as to bonds, and therefore the courts can not, not even upon a waiver of the bond.

McCaughey *v.* Brown, 45 Arks., 37;
Carit *v.* Williams, 67 Cal., 580.

More than this, there should be an express order, which is not in this Record, superseding the judgment or decree. (Reed *v.* Lander, 5 Bush., 598; Sage *v.* Central, etc., 93 U. S., 417.)

Besides, as set up in his complaint, Halliday was no party to this suit and knew nothing of it, but yet without supplemental bill, or any other proper proceeding known to the law, to bring him in, his sale is set aside and the property resold. The title to this land was already in H., and until his deed was regularly got rid of by judicial process there was nothing to sell. The Record disclosed title in H., and until that was legally set aside there was no title for the court to sell and convey. (Stoddard *v.* Chambers, 2 How., 318 and cases.)

So completely was Halliday out of that suit, it was no concern of his—and no right he had could be affected by it—how his purchase-money was disposed of by the court. (Knotts *v.* Stearns, 91 U. S., 641.)

The highest respect is due judicial sales, and at such H. purchased and had his purchase confirmed; and these sales to third parties are especially protected by the courts, even while appeals are pending, if there is no stay of proceedings on appeal.

"It is a rule, *nowhere disputed*, that third persons, purchasing at a sale made under the authority of a judgment or decree and not superseded by any stay of proceedings, thereby acquire rights which no subsequent

reversal of such judgment or decree can in any respect impair." (Freem. Judg., sec. 484, note 2, 3 ed.)

This surely must be decisive in this contest. Yet further, whatever way there may be to avoid this sale and purchase, for any proper cause, most certainly this is not it. It should have been attacked directly and H. made a party, and the whole proceeding examined into by specific pleadings and with opportunity to all to be heard.

The sale had been perfected and confirmed and the court closed, and no mere motion (as was attempted here, Rec., 15) to set the sale aside could reach it, and nothing but an independent direct proceeding could, or possibly a supplemental bill bringing in Halliday to the suit after it came from the Supreme Court of Arkansas back to the Chicot Circuit Court. This is well settled in the State from which this controversy comes.

State Bank *v.* Noland, 13 Ark., 299, approved in Newton *v.* State Bank, 14 *Ib.*, 9.

Then upon the state of pleadings, it is impossible to uphold this decree, even omitting the agreement set up in Halliday's complaint. (Exhibit C, Rec., 5, 6.)

Suppose, however, this proceeding to avoid H.'s deed to be in apt and exact form and shape, what becomes of the agreement relied on by H. that the money he paid was to be held in court in place of the land to abide the result of the appeal to the Supreme Court of Arkansas? There is a general denial of this agreement by Stuart and Whitaker, but there it is in black and white to speak for itself, made by them in a suit in which they were parties, and entered of record in the court, and three years, lacking one month, before the decree under which they claim to have purchased was rendered. There is no plea that it was not *bona fide*, that any fraud was practiced in bringing it about, or that for any purpose it is wrong or unconscionable. True, in the ups

and downs and the vicissitudes of the case counsel changed, but that is not strange or unusual. But the court will observe these same counsel making this agreement appear as counsel in the case in the Supreme Court of Arkansas.

35 Arks. (1 Turner) Rep., 511.

The courts, however, pay no attention to these changes as to attorneys, and will they allow parties to disregard their agreements, solemnly entered into by them? It is a fraud upon the court to attempt it. Whatever we may call this stipulation—a compromise, or what not—as it was carried into effect, the courts will sustain it.

"Although an attorney at law, merely as such, has, strictly speaking, no right to make a compromise, yet a court would be disinclined to disturb one which was not so unreasonable in itself as to be exclaimed against by all, and to create an impression that the judgment of the attorney has been imposed on or not fairly exercised in the case" (Holker *v.* Parker, 7 Cranch, 436, 452), "but will look into the facts and circumstances of the case and ascertain whether it be such a decree as the attorney might well have consented to in the exercise of his general authority to prevent further litigation and expense."

Saleski *v.* Boyd, 32 Ark., 74;

Union Mutual Life Ins. Co. *v.* Buchanan, 100 Ind., 63;

Jeffries *v.* Mut. Life Ins. Co. of N. Y., 110 U. S., 309.

Where a client stands by while the compromise is made, or, not being present, still retains the services of his attorney after a compromise made by him, it is a ratification of the compromise, and the client will not afterwards be heard to complain of it.

Black *v.* Rogers, 75 Mo., 441;

Eggleston *v.* Broadman, 5 Reporter (Mich.), 724;

Patterson *v.* Read (N. J.), 10 Atlantic, 807.

"When a party employs an attorney at law, either to prosecute or defend his suit in the courts of the country, he presents him to the opposite party and to the world as his accredited agent, and as such he must be concluded by his acts, or omission, where no fraud or unfairness is made to appear."

Lawson *v.* Bettison, 12 Ark., 417;
Saleski *v.* Boyd, 32 Ark., 74;
Rich. *v.* State Nat'l Bank, 7 Neb., 201;
7 Cent. Law Journal, 379;
Annelly *v.* De Saussure, 12 S. C., 488.

All stipulations made by parties for the government of their conduct or the control of their rights in the trial of a cause or the conduct of litigation are enforced by the courts.

Matter of Pet. of N. Y. L. & W. R. R. Co., 98 N. Y., 447, 453.

And such stipulations are equally binding when made by counsel in the trial of a cause or the conduct of litigation.

Read *v.* French and others, 28 N. Y., 285;
People *v.* Stephens, 52 N. Y., 306;
Arthur *v.* Homestead Fire Ins. Co., 78 N. Y., 462, 469;
Rich *v.* State Nat'l Bank, 7 Neb., 401;
M'Lean *v.* M'Namara, 55 Cal., 508;
Burgess *v.* Stevens, 76 Me., 559;
Davis *v.* Hall (Mo.), 3 S. W. Reporter, 382.

"An attorney at law has authority by virtue of his employment as such to do in behalf of his client all acts, in or out of court, necessary or incidental to the prosecution and management of the suit, and which affect the remedy only and not the cause of the action."

Moulton *v.* Bowker, 115 Mass., 40;
15 Central Journal, 241;
11 Central Journal, 440;

Hirsch *v.* Fleming (Ga.), 3 S. E. Reporter, 9;
M'Closkey *v.* Sutro, 64 Cal., 485;
Thompson *v.* Pershing, 81 Ind., 303;
Benson *v.* Carr, 73 Me., 76;
Ohlquest *v.* Farwell, 32 N. W. Reporter, 277.

It is quite a common practice in the courts to have money deposited, just as was done here, to await the end of the controversy, and then to be paid out according to the final decree. And there was great good reason for making this arrangement in the present instance, as the case would be for some time delayed (and the Record shows it was); it was proper to disentangle this land from litigation.

And now we are entertained with this pleasing spectacle—Halliday has his title to the land; his money paid for it is in court to be disposed of as, by the agreement of parties to the suit, the Supreme Court of Arkansas shall decide the case, and this money not returned or tendered back, H.'s land is again sold to others and he is entirely deprived of the land. Halliday, if all this is to be, surely deserves the deepest commiseration, especially as there is no semblance of fraud or improper dealing charged against him.

Why this agreement, so entered into by the parties to the foreclosure suit, is to be disowned in the absence of fraud is not shown. An appreciation of value of the land for almost three years might enter into the motives of appellees, but this would not, in law, be even the shade of a good reason. We have seen that as to the sale to a third party—one not party to the suit—a reversal without a stay will not disturb or affect the sale.

And this is even true if a party to the foreclosure suit asserting a lien should buy and the purchase-money is paid into the court as was done here. (Murphy *v.* Longworth, 14 Ohio, S. 349.)

After all, in any way presented, appellees, or the parties interested, can look only to this money deposited on H.'s purchase, and that is all there is of it.

While appellees deny possession of the land by any one, they insist and ask that the court quiet *their possession!* And they insist, if they can not hold the land, it is to be sold for taxes paid by them for the years 1881–4 inclusive. Of course, if they paid taxes on this land and Halliday did not, they can be reimbursed from H., but not in this manner; and if they paid taxes and Halliday paid also for the same period, they must look in another direction for reimbursement.

It is clear, then, that the acts and proceedings of Stuart and Whitaker operate to cloud Halliday's title, and to prevent him from enjoying the possession and use of his land, and upon the plainest principles of equity they ought to be restrained from so doing. Their pretended claim should be removed and set aside, and Halliday's title quieted.

Shell *v.* Martin, 19 Arks., 139;
Walker *v.* Peay, 22 *Ib.*, 103;
Adams Eq., 202, note 2, (7 Am. Ed.)

And the court below failing to do this, the case should be reversed and a decree entered here directing that court so to do.

D. H. Reynolds,
A. H. Garland,
H. J. May,
For Appellant.

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CLERK

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1892. No. 171.

WILLIAM P. HALLIDAY,
Appellant,

vs.

RICHARD H. STUART & JOHN S. WHITAKER,
As Executor of the last Will of Horace F. Walworth, dec'd.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR APPELLEES.

MARK VALENTINE,
JULIAN S. JONES,
For Appellees.

IN THE

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As Executor of the last Will of Horace F. Walworth, dec'd.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR APPELLEES.

Statement of the Case.

At the January term, 1878, of the Circuit Court of Chicot county, Arkansas, in Chancery, a decree was rendered in favor of Emma J. Wright, as executrix of the last will of Junius W. Craig, deceased, against Samuel R. Walker and these appellees, by which a certain mortgage was foreclosed upon the lands in controversy in this suit. (Record, 4.)

From this decree, Whitaker, as executor of Walworth, appealed to the Supreme Court of Arkansas. Pending the appeal a sale was made under the decree, and appellant Halliday purchased all of the lands for $1,200.

At the May term, 1880, of the Supreme Court, the case was reversed and remanded, with instructions that an administrator *de bonis non* of the estate of Craig be appointed, that he be made a party complainant, and further proceedings had, not inconsistent with the opinion of the Supreme Court. (Record, 14.)

At the January term, 1882, of the Chicot Chancery Court, an order was made on the mandate and opinion of the Supreme Court, setting aside the decree of foreclosure under which Halliday purchased, and the sale and confirmation thereunder, because, among other reasons, that the decree was rendered and sale made and confirmed when there was no representative of the estate of Junius W. Craig who could prosecute the suit. (Record, 15.)

At the same term, John G. B. Simms having taken out letters *d. b. n.* on Craig's estate, and being substituted as plaintiff, a second decree of foreclosure was rendered and sale ordered. (Record, 16.)

At this sale, appellees purchased for $2,000, received their deed, (Record, 19,) and the sale and deed were approved by the Court and a writ of possession awarded. (Record, 21.)

At the January term, 1885, of the Chicot Chancery Court, appellant filed his complaint herein, praying for an injunction restraining appellees from taking possession of the property and from seeking or obtaining a writ of possession therefor. (Record, 2.)

In his complaint appellant sets up two causes of action:

1st. That on February 27, 1879, while an appeal from said decree of foreclosure was pending in the Supreme Court of Arkansas, the plaintiff in the suit, and the defendants, who were appellants in said appeal, entered into a written agreement, by which the proceeds of the sale so ordered and to be made, should be paid into the

said Circuit Court and there held, "*to abide the decision of the case on appeal, and to be in place of the property.*"

2d. That he was not a party to any proceedings subsequent to his purchase, and, therefere, not bound thereby.

The chancellor granted the injunction as prayed for.

In April following, appellees transferred the case to the Circuit Court of the United States for the Eastern District of Arkansas, and, on September 7th following, filed their answer, in which they deny the agreement as above set out, and deny that appellant was in possession as alleged, and allege that, appellee Whitaker was, when he appealed from the decree of foreclosure, under which Halliday purchased, executor of the last will and testament of Horace F. Walworth, deceased, and that said appeal as executor operated as a supersedeas of said decree.

They further allege their own possession of the property since the writ of possession was awarded to them, and payment of taxes, for which, in case the injunction be sustained, they ask a decree and a lien on the property. They admit the non-occupancy of the property for the reason that, pending the appeal to the Supreme Court, appellant Halliday had so dismantled the place as to render it uninhabitable. (Record, 12.)

March 19th, 1888, this decree of the Circuit Court of the United States was rendered, dissolving the injunction and quieting appellee's title, (Record, 22,) from which appellants appealed to this Court.

Argument.

Appellant's counsel are at a loss to understand why Stuart and Whitaker, or anybody else ever believed that the decree of January 1878, was superseded by Whitaker's appeal.

Our reasons are these: In Arkansas, lands are assets in the hands of the administrator. (Mansfield's Digest,

Sec. 68.) When the decree was rendered, Stuart and Whitaker were claiming title to the land by purchase at tax sale in 1869, and also by purchase under a decree of foreclosure in favor of Stuart in 1871. (Record, 18.) This interest was subsequently found to amount to more than $2,000 (Record, 20,) and was declared a first lien on the land. (Record, 18) The decree completely destroyed Whitaker's interest, and he appealed.

Counsel suggest that we may have mistaken this for an appeal from the probate Court under the Act of March 24th, 1875, Sec. 1387, Mansfield's Digest, which provides, that:

"Administrators, executors and guardians shall not be required to give bond, but all orders against them as such shall be suspended by the appeal."

This Act supersedes the Act of March 16, 1871, which provides, that:

"Appeals may be taken from said Probate Court to the Circuit Court, but shall be taken without bills of exception, aud in the manner and within the time that appeals are now taken from Justices' Courts; that is to say, the party appealing shall produce, within sixty days after the rendition of the judgment, to the clerk of the Circuit Court, a certified copy of the judgment and amount of costs, and cause to be executed before said clerk, by one or more sufficient sureties, to be approved by the clerk, a bond to the effect that, the appellant will satisfy and perform the judgment that shall be rendered upon the appeal; whereupon, the clerk shall issue a mandate to the judge rendering the judgment or decree, as the case may be, notifying him that an appeal has been taken in the cause, and to stay all further proceedings on the same, and to transmit to the office of said clerk, all the original papers therein, and the appellee shall be actually or constructively summoned to appear and defend the appeal."

In Johnson vs. Duval, 27 Ark. 599, the Supreme Court, in construing this statute, say:

"Under this law which was in force at the time of the appeal, there are three main requisites necessary to perfect an appeal from the Probate to the Circuit Court. 1st. The party appealing shall produce, within sixty days after the rendition of the judgment, a certified copy of the judgment and amount of costs. 2d. He shall cause to be executed a bond, with security, to the effect that he will satisfy and perform any judgment that may be rendered against him. 3d. He shall file with the circuit clerk, an affidavit that the appeal was not taken for delay or vexation, but that justice may be done."

"From the transcript in this case, we find that neither of these requirements has been done." * * *

"Neither was a bond filed in this case; but, was it necessary? Notwithstanding the broad language of the Act which required from parties applying for appeals, that they should give bond and security to pay the amount of the recovery and cost awarded, in case the judgment should be affirmed; those terms, we think, cannot be regarded as applying to executors or administrators, when they are appealing from judgments rendered against the goods of the testator or intestate."

"There have been various reasons assigned for construing such cases to be exceptions to the statute. It has been said that they are not bound to give security on an appeal, because they gave it when they undertook the administration of the estate; and that such bond and security would make the debt their own, and that such bond and security from executors and administrators, on appeals from judgments or decrees found upon a demand against the testator, would frequently prevent them from seeking relief against an erroneous judgment or decree, which, however ruinous to the estate, might not affect his individual interests. These are the reasons given: 1 *Loonax on Executors*, 541; *McCauley vs. Griffin*, 4 *Grat.* 9; *Shannon vs. Christian*, 1 *Rand.* 393; *Saddler vs. Gun*, 1 *Hen. & Munf.* 26, all of which were construing a statute

in Virginia, somewhat similar to the one now under consideration; and we believe them to be sufficient to warrant us in saying, that executors or administrators, under official bonds as such, are not required to give the bond in section 2 of the Act approved March 16, 1871."

We do not see why the above reasoning does not apply as well to appeals from the Circuit or Chancery to the Supreme Court.

Counsel seem to admit that, if the decree from which Whitaker appealed had been a demand or charge upon the estate of Walworth, the executor's appeal would have superseded it, but that, being land or a lien upon land, this theory does not apply. Well, was it not a demand or charge? The land, the lien, or Whitaker's interest, whatever it might have been, was assets in his hands, and, so far as we know, the only assets of the estate of Walworth.

The estate of Craig sought to enforce what Whitaker claimed was a subordinate lien; he sought by cross-bill to enforce his superior lien; the decision was adverse, and all of the assets of the estate of Walworth were swept away. If counsel are correct, Whitaker's only mode of saving his fiduciary estate was, to make himself and his friends liable for a debt of $53,000.

Neither the Statute nor any authority cited sustains this view. Section 1295, Mansfield's Digest, after stating the way in which supersedeas may be had on appeals to the Supreme Court, provided, that:

"In all cases where supersedeas is obtained by or on behalf of a personal representative of a deceased person, upon any judgment against such decendent's estate or against such representative in his fiduciary capacity, to be a charge upon or collected from such estate, the supersedeas bond shall only be to the effect that such personal representative shall not commit or suffer any waste or devastavit of such estate during the delay occasioned by the supersedeas."

We see then that all judgments, without qualification against the decendent's estate, come within the proviso, but, as judgments may be rendered against an administrator which are not charges upon the estate, such judgments are not within it, so that this section conforms essentially to section 1387, providing for appeals from the Probate Court.

The case of Tucker vs. West, 31 Ark. 643, is almost precisely similar to this. Tucker as administrator sued in the Circuit Court to enforce a demand in favor of his intestate's estate, just as Whitaker, as executor, sought by his cross-bill, to enforce a demand in favor of his testator's estate. Tucker failed to give a bond for costs; his case was dismissed and he appealed. The Supreme Court in reversing the decision, say: "If they, (executors and administrators) should be required to become personally bound for costs, or forced to induce others to become personally liable, they might be deterred from bringing suits upon claims that might be collected by legal process, but otherwise lost."

And this, although section 701 of the Civil Code, as quoted in the opinion on page 605, provides that, "every plaintiff sueing as an assignee * * * may be required to give security for costs," and, although the Court say page 646, that, "an assignee in law is one in whom the law vests the right, as an executor or administrator," they further say: "We do not think that administrators and executors are assignees within the meaning of the above statute. In other words, we do not think the Legislature intended to include them in the language "every plaintiff, sueing as an assignee, &c., when insolvent, may be required to give security for costs."

Counsel say: "The theory upon which executors and administrators are relieved of giving bonds on appeals, applies only *where there is a demand or charge urged upon the estate*, and the general administration bond *is deemed a sufficient security*," and cites, among others, Tucker vs.

West, above noted, which we have just shown was not to *resist* a demand or charge against the estate, but to *enforce* a demand in favor of it.

In McCauley vs. Griffin, 4 Grattan, 9, cited in Johnson vs. Duval, 27 Ark. 602, no executorial bond had been given; still the Court held that no appeal bond was necessary, and this was approved in Shannon vs. Christian, 1 Randolph, 393; and in Sadler vs. Gun, 1 Henning & Munford, 26.

In Wilson vs. Wilson's administrators, 1 Henning & Munford, 16, it was held that, although the statute requires all appellants to give bond, still the rule is *universal*, that executors and administrators need not do so, since to require it would be against public policy.

But, counsel say: "There should be an express order, which is not in this record, superseding the judment or decree," and cite Reed vs. Lauder, 5 Bush, 598, and Sage vs. Central R. R., 93 U. S. 417.

"The supersedeas is a written order, signed by the clerk, commanding the appellee and all others to stay proceedings on the judgment or order." (Mansfield's Digest, 1293.)

Reed vs. Lauder, above noted, was an appeal from a judgment at law, and the Supreme Court of Kentucky, held, probably very properly that all the requirements of the statutes were necessary to perfect an appeal. But this, for obvious reasons does not apply to decrees in chancery foreclosing mortgages. In such cases the Chancery Court, through its master or commissioner, executes its own decrees, and if, as in this case it were claimed that a decree was superseded by operation of law; and the clerk were to issue a supersedeas to the Court commanding it to stay proceedings, and the Court should differ with the clerk, whose opinion would prevail?

In Sage vs. Central Railroad, this question did not arise, but the question was, whether an appeal granted by Mr.

Justice Miller was applied for in apt time; and the learned justice, in his dissenting opinion, says: * * * "It is not denied that the bond approved by me would operate as a supersedeas."

In Trapnall vs. Brownlee, 8 Ark. 207, the Court held that the appeal by an administratrix stayed the decree by operation of law for herself and for all of the other defendants.

In McCreary, administratrix, vs. Rogers, 35 Ark. 299, the administratrix prayed an appeal as soon as judgment was rendered against her, but the circuit judge suspended granting it until he could take action on writs of garnishment issued in the suit. Her counsel insisted on her right of appeal at the instant it was prayed for, and, on mandamus to the Supreme Court, that Court sustained them. The Court say, page 302:

"The right of appeal is positive, regardless of merits, and should be granted upon a judgment or final order, immediately, on motion made for the purpose during the same term. If it operates as a supersedeas, it takes the case at once out of the jurisdiction of the Court, and cuts off all proceedings directed to carrying the judgment or order into effect." * * * "The appeal itself in this case, being prayed by an administratrix, would, if granted, have at once operated as a supersedeas. The party was entitled to that effect of it, and the judge had no discretion to postpone its operation until further orders should be made in the case, which would not have been proper if this appeal had been granted."

Whitaker's appeal being granted, the case passed at once out of the jurisdiction of the Chicot Chancery Court. (Hanson vs. Trader and Wife, 29 Ark. 85.)

We may concede all that counsel claim for the dignity of judicial proceedings by Courts of competent jurisdiction, and for the rights of third parties claiming under their judgments or decrees. But, the decree under which

Halliday purchased was his title; he was charged with notice of its provisions, and when he saw that Whitaker, as executor, had appealed from the decree, if he then chose to purchase, he did so simply as a *pendente lite* purchaser.

But counsel ask: "Suppose, however, this proceeding to avoid Halliday's deed to be in apt and exact form and shape, what becomes of the agreement relied on by H. that the money he paid was to be held in Court, *in place of the land, to abide the result of the appeal to the Supreme Court of Arkansas?*"

As counsel ask the special attention of the Court to this agreement, we insert it in full.

"In the Circuit Court of Chicot County. In Chancery.

CHARLES W. FRY, as receiver of the estate of Junius W. Craig, Deceased, and Emma J. Wright, Susan R. Walker, *et al.*,
vs.
JOHN S. WHITAKER, Executor of H. F. Walworth, Deceased, and RICHARD H. STUART. } Suit in Equity.

"In the above entitled cause, it is hereby agreed that the proceeds of any sale or sales that may be made under any order or orders of sale on decree of the Court aforesaid, shall be paid into said Court by the master or commissioner appointed by said Court, sitting in chancery or at chambers, for the sale of the property or any part thereof ordered or decreed to be sold by said Court in said cause and held by said Court until the disposition of an appeal taken by said John S. Whitaker in said cause to the Supreme Court of this State and now pending, is disposed of and the mandate of said Supreme Court therein is filed in the office of the clerk of

said Circuit Court, and then only in pursuance of such mandate in the further proceedings in said Circuit Court.

C. H. CARLTON, and
W. W. WILSHIRE,
Atty's for Whitaker, et al.
D. H. REYNOLDS,
Att'y for Receiver."

Endorsed: Chas. W. Fry, as receiver, et al. vs. John S. Whitaker et al. Agreement of counsel that proceeds arising from sale of property be paid into and held by the Court until final disposition of an appeal to the Supreme Court.

Filed in my office, February 27, 1879.

GEO. T. WILKINSON, *Clerk.*

For the sake of the argument we might concede the correctness of the legal propositions laid down by counsel, but they do not apply to this case. Our objections go to the attempt to so construe this very harmless agreement as to make it a complete settlement of all matters in dispute in the case, and our reasons are these:

1st. There are no proper parties to it. The plaintiff, (the estate of Craig,) the party most vitally interested, is totally unrepresented. (See decree of Supreme Court of Ark, Record, 15.) The agreement is between the counsel for the receiver and the counsel for Stuart and Whitaker. Certainly the receiver could not make an agreement which could dispose *in toto* of the subject-matter of the litigation and, without special authority, (which is not shown,) neither could counsel for Stuart and Whitaker.

Saleski vs. Boyd, 32 Ark. 74.
Picket et al. vs. M. N. Bank of Memphis, Same, 346.
Holker and others vs. Parker, 7 Cranch. 436.